UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SHOLEM WEISNER,

                         Plaintiff,

       -against-

GOOGLE LLC and SHMUEL NEMANOV,

       Defendant and Involuntary Party.

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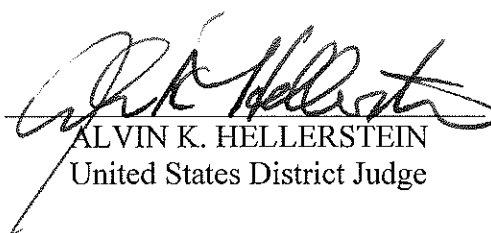
ORDER ON CONSTRUCTION OF CLAIMS

23 Civ. 8186 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Pursuant to *Markman v. Westview Instr., Inc.*, 517 U.S. 370 (1998), the Court has

reviewed the parties' respective positions, and held a hearing on December 12, 2024, regarding

ambiguities in the claim language of U.S. Patent Nos. 11,163,839; 10,685,068; and 10,860,667.

After consideration of the proposed constructions submitted by the parties, the Court adopts the

constructions set out in Column Four of the attached chart.

               SO ORDERED.

Dated: December _12_, 2024
               New York, New York

                             ALVIN K. HELLERSTEIN
                             United States District Judge

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	Claim Phrase[1,2]	Plaintiff Weisner's Proposed Construction	Defendant Google's Proposed Construction	Court's Construction
1	'068 patent claims 1, 16 and 30[3] "**upon instances of a physical encounter between the individual member** carrying the device, **and a stationary vendor member**"	Plain and ordinary meaning. No construction necessary.	"When an individual who is a member of the network enters the physical business location of a stationary vendor which is also part of the network, that causes [an application[4]/software[5]] on the individual member's device to"[6]	When an individual who is a member of a network enters the physical business location of a stationary vendor that is also part of that network, certain phenomena follow, as described in the claim.

[1] The terms that Google proposes to construe appear in several claims with substantially the same wording, so the parties have grouped them here. For listed phrases that are partially bolded, Google proposes to construe those parts of the claims that are bolded. The non-bolded parts comprise additional language appearing in the claims that neither party proposes to construe.

[2] The parties note where a similar term was construed by the Court in *Weisner I* by reference to the internal page numbers in the Court's claim construction chart (Dkt. 141).

[3] In *Weisner I*, the Court construed the similar term "**upon a physical encounter between the individual member and a stationary vendor member** of a plurality of stationary vendor members of the member network **[at a physical premises of the stationary vendor member], to transmit key data of the stationary vendor member and of the individual member to the processing system automatically as a result of the physical encounter**." Dkt. 141 at 4.

[4] "[A]n application" applies to the construction of the '068 and '667 patent claims.

[5] "[S]oftware" applies to the '839 patent claim.

[6] This disputed term comprises the first portion of the term the Court previously construed. Google's proposed construction, therefore, follows the Court's construction of the first part of that term in *Weisner I*, which was, "When **an individual who is a member of the network enters the physical business location of a stationary vendor which is also part of the network, that causes an application on the individual member's device to** automatically transmit to the processing system the 'key data' of the stationary vendor member and of the individual member." Dkt. 141 at 4 (emphasis added). Weisner did not object to the Court's construction. *See* Dkt. 143, 04-03-23 Transcript of Markman Hearing at 8:6-8.

	Claim Phrase[1,2]	Plaintiff Weisner's Proposed Construction	Defendant Google's Proposed Construction	Court's Construction
	'667 patent claims 1, 9 and 17 **"upon instances of a physical encounter between an individual member** of a member network who is mobile and has an account associated with a URL **and a vendor member"** '839 patent claim 1 **"upon instances of a physical encounter between the individual member** who is mobile and has an account associated with a URL **and a vendor member"**		'068 /'667/'839 Abstract. '068 patent at 1:7-10. *See also* '068 at 1:6-9; '839 at 1:8-11. '068 patent at 2:34-42. *See also* '668 at 2:33-41; '839 at 2:39:47. '068 patent at 3:12-17. *See also* '667 patent at 3:12-17; '839 patent at 3:19-24. '068 patent at 3:18-22. *See also* '667 patent at 3:18-22; '839 patent at 3:25-29. '068 patent at 3:23-29. *See also* '667 patent at 3:23-29; '839 patent at 3:30-36. '068 patent at 6:15-21. *See also* '667 patent at 6:15-21; '839 patent at 6:13-18. '068 patent at 7:46-52. *See also* '667 patent at 7:46-52; '839 patent at 7:53-59.	

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	Claim Phrase[1,2]	Plaintiff Weisner's Proposed Construction	Defendant Google's Proposed Construction	Court's Construction
			'068/'667/'839 Fig. 3. '068 patent at 8:31-42. *See also* '667 at 8:31-42; '839 at 8:38-49. '068 patent at 9:5-8. *See also* '667 patent at 9:5-8; '839 at 9:12-15. '068 patent at 10:6-12. *See also* '667 patent at 10:6-12; '839 at 10:13-19. '068 patent at 11:16-29. *See also* '667 patent at 11:16-29; '839 patent at 11:23-36. '068 patent at 11:29-39. *See also* '667 patent at 11:29-39: '839 11:36-36. '068 patent at 12:25-30. *See also* '667 patent at 12:25-30; '839 patent at 12:31-36. '068 patent at 15:15-23. *See also* '667 patent at 15:15-21; '839 patent at 15:18-24.	

	Claim Phrase[1,2]	Plaintiff Weisner's Proposed Construction	Defendant Google's Proposed Construction	Court's Construction
			'068 patent at 15:23-28. *See also* '667 patent at 15:23-28; '839 at 15:26-31. '068 patent at 15:51-57. *See also* '667 patent at 15:51-57; '839 patent at 15:54-60. *See also* FH2-000144-146; FH2-000164-171.[7] *See also* FH2-000396-398; FH2-000406. *See also* FH2-000635-637; FH2-000656-657.	

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[7] All citations to "FH2" refer to pages of the prosecution history of the patents-in-suit that Google produced to Weisner and Nemanov and will provide to the Court as excerpts and in full on a USB drive.

	Claim Phrase[1,2]	Plaintiff Weisner's Proposed Construction	Defendant Google's Proposed Construction	Court's Construction
2	'068 Patent claims 1, 16 and 30[8] "a location of the individual member at the physical premises determined by the positioning system" '667 patent claims 1, 9 and 17 "a location of the physical encounter determined by a positioning system"	Plain and ordinary meaning. No construction necessary. *See* the "Objects and Advantages" section in the '839 patent at 5:52-58, **"the place of entry information coming from a global positioning system that the person is in communication with"** *('839 patent at 5:52-58)* *('667 patent at 5:41-50)* *('068 patent at 5:41-50)* "As can be seen in FIG. 5, the places are and times of entry are also recorded. The places	"The individual member entering and exchanging 'key data' with the stationary vendor member automatically causes the positioning system to determine the location of the individual member."[9] "The individual member entering and exchanging 'key data' with the stationary vendor member automatically causes the positioning system to determine the location of the physical encounter."	

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[8] In *Weisner I*, the Court construed the similar term "[upon] a location of each individual member's [device] determined by the positioning system." Dkt. 141 at 5. Google originally proposed the term to be construed as including "upon . . ." at the beginning of each of these three phrases to provide context (as in *Weisner I*) because the three listed phrases appear in the same claim sub-paragraphs as the phrases in row one. *See, e.g.*, '068 patent at 21:24-34. In response to Plaintiff's objection, Google has omitted "upon" as it is also identified in row one.

[9] Google's proposed construction is the same as the Court's construction of the similar term in *Weisner I*, which was "**The individual member entering and exchanging 'key data' with the stationary vendor member automatically causes the positioning system to determine the location of the individual member** [device]." Dkt. 141 at 5 (emphasis added); *see also* Dkt. 143, 04-03-23 Transcript of Markman Hearing at 13:3-9. The term being construed is part of the same paragraph as term 1 with "upon.".

	Claim Phrase[1,2]	Plaintiff Weisner's Proposed Construction	Defendant Google's Proposed Construction	Court's Construction
	'839 claim 1 "a positioning system that identifies a location of the device"	are obtaining from the fact that each device 22 is capable of communicating with and **receiving place data from the global positioning system used in the present invention.** It is noted that the global positioning device uses a satellite or <u>any other appropriate means known to those skilled in the art.</u> *('839 patent at 13:34-40)* *('667 patent at 13:30-36)* *('068 patent at 13: 30-36)*	"a positioning system that is automatically caused to determine the location of an individual member's device when an individual member enters a stationary vendor member's business and exchanges key data with the stationary vendor member." '068 patent at 5:44-50. *See also* '667 patent at 5:44-50; '839 patent at 5:52-58. '068 patent at 6:15-21. *See also* '667 patent at 6:15-21; '839 patent at 6:24-30. '068 patent at 7:5-8. *See also* '667 patent at 7:5-8; '839 patent at 7:14-17. '068 patent at 13:30-36. *See also* '667 at 13:30-36; '839 at 13:34-39. '068 patent at 13:59-65. *See also* '667 patent at 13:59-65; '839 patent at 13:63-14:2.	a positioning system that automatically registers the location of an individual member's device when that member enters the location of a vendor that is a member of the same network, and causes key data to be exchanged with that vendor.

	Claim Phrase[1,2]	Plaintiff Weisner's Proposed Construction	Defendant Google's Proposed Construction	Court's Construction
			See also FH2-000144-146; FH2-000164-171. *See also* FH2-000396-398; FH2-000406. *See also* FH2-000635-637; FH2-000656-657.	
3	'068 Patent claims 1, 16 and 30; '667 patent claims 1, 9 and 17; '839 claim 1[10] "key data"	No further construction necessary. The Court construed "key data" in *Weisner I,* to mean "[t]he information which a member has selected to receive from or transmit to the network database or other members." Dkt 141 at 5.	"Data, including a URL or other information, that the member previously designated for transmission to other members during 'physical encounters.'" '068/'667/'839 Abstract. '068 patent at 3:9-11. *See also* '667 patent at 3:9-11; '839 patent at 3:16-18. '068 patent at 3:30-40. *See also* '667 patent at 3:30-40; '839 patent at 3:44-47. '068 patent at 7:37-40. *See*	The information which a member has selected to transmit to other members during physical encounters.

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[10] In *Weisner I*, the Court construed the same term "key data." Dkt. 141 at 5.

	Claim Phrase[1,2]	Plaintiff Weisner's Proposed Construction	Defendant Google's Proposed Construction	Court's Construction
			also '667 patent at 7:37-40; '849 patent at 7:44-47. '068 patent at 9:5-16. *See also* '667 patent at 9:5-16; '839 patent at 9:12-23. '068 patent at 9:63-10:10. *See also* '667 patent at 9:63-10:10; '839 patent at 10:3-17. '068 patent at 11:20-29. *See also* '667 patent at 11:20-29; '839 patent at 11:27-36. *See also* FH2-000144-146; FH2-000164-171. *See also* FH2-000396-398; FH2-000406. *See also* FH2-000635-637; FH2-000656-657.	